

95369

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

50520

FILE: B-181698
B-181706

DATE: February 6, 1975

MATTER OF: Tombs & Sons, Inc.
Dyneteria, Inc.

DIGEST:

1. Contracting officer properly rejected low offer for Navy mess attendant services where RFP required justification if offeror proposed manning levels lower than Government estimate and offeror "guaranteed" to meet the contract's requirements at no increase in price, since if performance is required at Government estimate offeror's price does not support its basic labor costs as required by RFP.
2. No basis exists to question award for mess attendant services to offeror which proposed manning levels lower than Government estimate, where offeror properly substantiated deficiency, as permitted by RFP, and offeror's proposal met other requirements of RFP (i.e. dollar/hour ratio comparison with basic labor cost) without regard to prices submitted for volume variation factor.

On May 30, 1974, request for proposals (RFP) N66314-74-R-2570, for the performance of mess attendant services from July 1, 1974, through June 30, 1975, at the Naval Station, Treasure Island, San Francisco, was issued by the Naval Regional Procurement Office, Naval Supply Center, Oakland, California. Twelve of the 13 firms responding by the June 14, 1974, deadline for receipt of offers were determined to be in the competitive range.

On June 19, 1974, those 12 offerors were contacted by telephone and advised that the best and final offers were to be submitted by June 21, 1974. Moreover, the agency states that all offerors were then advised that the submission of an unbalanced offer with respect to the volume variation factor (§ E of the RFP) would cause the offer to be rejected. The contracting officer confirmed these oral instructions by telegram dated June 20, 1974, and timely best and final offers were received from all of the offerors.

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Subsequent to further analysis, the determination was made that Integrity Management International, Inc. (Integrity), was the lowest acceptable offeror, and its offer at a price of \$388,379 was accepted on June 27, 1974. However, the award to Integrity was protested by Tombs & Sons, Inc. (Tombs), and Dyneteria, Inc. (Dyneteria).

Tombs protests the rejection of its lower priced proposal (\$385,173.20) and alleges that the contracting officer acted in an arbitrary and capricious manner by awarding the contract to Integrity which proposed a higher price. In this regard, Tombs proposed to perform with fewer man-hours than the Government estimate, and asserts that the Navy arbitrarily established the minimum "estimated" manning hours for performance under the RFP at 95,381.5 hours for the 365-day period.

The RFP instructed offerors to submit proposed manning charts with their proposals. The clause entitled "Evaluation of Offeror's Manning and Prices" (§ D(R)(a) of the RFP) cautioned that:

"* * * Submission of manning charts whose total hours fall below the total of 95,381.5 hours for the total of 365 days during the contract period as stated above may result in rejection of the offer unless the offeror clearly substantiates the manning difference with specific documentation demonstrating that the offeror can perform the required services satisfactorily with fewer hours. Such documentation should accompany the offer."

Tombs submitted a total offer of 77,420 hours (81.17 percent of the Government estimate) which it said was based on labor estimates of 70,386.5 hours, supervision of 4,953.5 hours plus 2,080 hours for an area manager. Tombs contends that the details of how the firm could perform for less man-hours than the Government estimate was reflected in the manning charts submitted with Tombs' initial proposal.

However, on June 20, 1974, the contracting officer sent the following telegram to the protester:

"* * * IN ADDITION YOUR FIRM SUBMITTED MANNING HOURS THAT FALL BELOW THE TOTAL OF 95,381.5 DESIRED BY THE GOVERNMENT WITHOUT CLEARLY SUBSTANTIATING THE MANNING DIFFERENCE WITH SPECIFIC DOCUMENTATION DEMONSTRATING THAT YOUR FIRM CAN PERFORM THE REQUIRED SERVICES SATISFACTORILY WITH FEWER HOURS. REQUEST THIS DOCUMENTATION BE SUBMITTED BEFORE PROPOSAL DEADLINE AND/OR REVISE AS DESIRED."

Tombs, in a letter to the Navy, also dated June 20, 1974, stated that if its proposed manning levels did, in fact, prove to be insufficient, it would augment its manning in order to meet the contract's requirements at no additional cost to the Government. In view of this fact, Tombs now questions the contracting officer's rationale for rejecting its proposal on the basis that: "Documentation which clearly and substantially indicated how your firm could achieve satisfactory service with lesser hours was not submitted."

The language of the solicitation, supra, clearly provided all offerors with the opportunity to submit offers deviating from the Government estimate of man-hours and Tombs was informed prior to the submission of best and final offers that its proposal offering only 77,230 hours had not been submitted pursuant to the requirements imposed upon all the offerors by § D of the RFP.

Moreover, even if the Navy were to have accepted Tombs' offer to "guarantee" performance either (1) as the justification (per § D(R)(a) of RFP) for using fewer hours than the Government's estimate or (2) in lieu of the justification, there is a question as to how this "guarantee" was to have been evaluated with regard to the RFP's § D(R)(b) formula.

Section D(R)(b)(2) states that:

"(2) the total manhours offered must be supported by the price offered when compared as follows. The total of all hours offered for the total days during the contract period will be divided into the total offered price (less any evaluated prompt payment discount) to assure that this dollar/hour ratio is at least sufficient to cover the following basic labor expenses:"

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basic wage rate
health and welfare
vacation and holiday
FICA
unemployment insurance
workmen's compensation.¹

"Failure of the price offered to thus support the offeror's manning charts may result in rejection of the proposal."

In this regard we note that Tombs' basic labor cost as computed by the Navy was \$4.29 per hour, while Tombs' dollar/hour ratio at its manning chart level was:

$$\frac{381,313.94 \text{ (price less evaluated discount)}}{77,230 \text{ (hours offered)}} = \$4.937$$

As such, Tombs' dollar/hour ratio at its manning chart level exceeds its basic labor expense and therefore was not violative of § D(R)(b)(2). However, in view of Tombs' "guarantee" to provide additional manning if required at no additional cost, an examination solely of the Tombs' dollar/hour ratio at its manning chart level is misleading for, as a greater performance level became necessary and the number of hours provided by Tombs increased, the dollar/hour ratio would decrease. Thus, if for example it became necessary for Tombs to perform at the Government estimate of man-hours, as we believe it said it would do at no increase in price, Tombs' dollar/hour ratio would be:

$$\frac{381,313.94 \text{ (net price)}}{95,381.5 \text{ (hours)}} = \$3.997 = (\$4.00)$$

Accordingly, at the Government's estimate, Tombs' dollar/hour ratio is insufficient to cover its basic labor cost of \$4.29. Irrespective of all else, upon this basis the Navy had a valid reason to reject Tombs' bid and Tombs' protest is denied.

1. See Matter of Dyneteria, Inc., B-181704, January 16, 1975, 54 Comp. Gen. _____ for exact language of formula.

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Dyneteria's protest alleges that the contracting officer did not use proper discretion or the proper method of evaluation as listed in the RFP in making the award to Integrity. It contends that the contracting officer used an "off set" offered by Integrity "in order to be below the required dollar value for award" despite the fact that Dyneteria was warned by telegram "that increasing or decreasing of meals at any particular rate which would off set the bid in any way would not be considered for evaluation purposes of the bid." In addition, Dyneteria maintains that Integrity's offered price did not cover its labor costs as requested by the RFP.

Section D(R)(c) states that:

"(c) Award will be made to the responsible offeror whose proposal, meeting the criteria set forth in (a) and (b) above, offers the lowest evaluated total price after application of the evaluation factors for monthly volume variations as provided in Section E. (Emphasis added.)"

The propriety of the evaluation is apparently questioned in light of Dyneteria's interpretation of the June 20, 1974, telegram which stated, in pertinent part:

"* * * YOUR FIRM WAS CAUTIONED THAT WHILE THE REQUIRED DOLLAR-HOUR RATIO IS DETERMINED FOR COMPETITIVE RANGE BEFORE ADJUSTING FOR THE VOLUME VARIATION FACTOR, SUCH FACTOR WILL BE CONSIDERED IN DETERMINING THE REASONABLENESS OF THE PRICE AND THE RESPONSIBILITY OF THE OFFEROR. 'AN UNBALANCED OFFER WILL AFFECT THESE DETERMINATIONS AND OFFERORS ARE WARNED NOT TO SUBMIT UNBALANCED OFFERS AS THEY WOULD BE SUBJECT TO REJECTION AS AFFECTING REASONABLENESS OF PRICE AND/OR RESPONSIBILITY OF THE OFFEROR.'"

The context of Dyneteria's protest indicates its belief that Integrity's price adjustment for volume variations was used in the evaluated comparison of Integrity's basic labor expense to its dollar/hour ratio per § D(R)(b)(2) of the RFP. However, this was not the case.

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The contracting officer's report states that the language of the telegram meant that the factor would not be considered in evaluation for purposes of determining the competitive range for further negotiations. For the purpose of determining the successful offeror, he maintained that the "per meal" adjustment factors were included in the evaluation to determine the reasonableness of price and responsibility of the offeror. This was in accordance with section E of the RFP.

The award to Integrity was made on the basis of its offer to perform at less manning hours than the Government estimate. Integrity proposed 88,688 total work hours, 92.98 percent of the Government estimate. To further clarify and justify its proposal, Integrity submitted a letter identifying the type of day, number of days applied to each type, and manning hours applied to each type of day. In addition, a listing of premium days, paydays and holidays was provided to document the days where the contractor could have man-hour saving because meal volume would be expected to fall below normal. When Integrity submitted its best and final offer, the price was revised to \$388,379. The Integrity price volume variation factors were 29 cents for meal decreases and 13 cents for meal increases.

The contracting officer determined that Integrity had substantiated its proposed manning level since it had specifically documented how it could achieve adequate performance at that level in accordance with the requirements of the RFP. See Matter of ABC Management Services, Inc.; Tidewater Management Services, Inc.; Chemical Technology, Inc.; 53 Comp. Gen. 656 (1974) 53 Comp. Gen. 198 (1973).

Moreover, Integrity's dollar/hour ratio was as follows:

$$\frac{\$384,495.21}{88,688} \begin{array}{l} \text{(price less evaluated discount)} \\ \text{(hours)} \end{array} = \$4.335$$

While its basic labor expense per our calculation was:

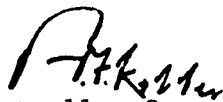
Basic wage rate	\$3.50
Health and welfare	\$0.18
FICA (5.85% of basic wage and health and welfare)	\$0.215
Unemployment insurance (3.15% of basic wage)	\$0.110

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Workman's compensation (2.34%	
of basic wage)	\$0.082
Vacation and holidays (5% of	
basic wage)	<u>\$0.175</u>
	\$4.262

Therefore, since Integrity's dollar/hour ratio (\$4.33) exceeds its basic labor expense (\$4.26) without any consideration of any volume variance factor allegedly considered by the contracting officer, we see no basis to conclude that Integrity did not meet the relevant RFP criteria of § D.

For the reasons set forth above, the protests are denied.


Deputy Comptroller General
of the United States